

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH  
CENTRAL DIVISION

ERIC KAMAHELE,  Petitioner,  v.  UNITED STATES OF AMERICA,  Respondent.	ORDER AND MEMORANDUM DECISION GRANTING PETITION  Civil Case No. 2:15-cv-506-TC Criminal Case No. 2:08-cr-758-TC  Judge: Tena Campbell
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Petitioner Eric Kamahele has submitted a Second Amended Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (ECF No. 93) after the Tenth Circuit remanded his case to allow the court to consider the impact of the Supreme Court’s decision in United States v. Taylor, 142 S. Ct. 2015 (2022), on Mr. Kamahele’s convictions. United States v. Kamahele, No. 17-4154, 2023 WL 3243228 (10th Cir. May 4, 2023). The United States has stipulated to the filing of this amended motion and the parties jointly ask the court to vacate Mr. Kamahele’s two convictions under 18 U.S.C. § 924(c).

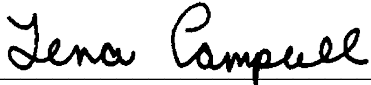
The court agrees that Mr. Kamahele’s first § 924(c) conviction, based on a violation of the Violent Crimes in Aid of Racketeering (“VICAR”) statute, 18 U.S.C. § 1959(a)(3), must be vacated under the Tenth Circuit’s ruling in United States v. Toki, 23 F.4th 1277, 1280 (10th Cir. 2022) (holding that VICAR is not categorically a crime of violence under § 924(c)’s force

clause); see also United States v. Davis, 139 S. Ct. 2319 (2019) (holding that § 924(c)'s residual clause is unconstitutionally vague). The court further agrees that Mr. Kamahele's second § 924(c) conviction, based on his conviction for attempted Hobbs Act robbery in violation of 18 U.S.C. § 1951(a), must be vacated under the Supreme Court's ruling in Taylor, 142 S. Ct. 2015.

Therefore, based on the rulings from the Supreme Court and the Tenth Circuit, the stipulation of the parties, and for good cause appearing, the court grants Mr. Kamahele's Second Amended Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 (ECF No. 93). The court will file an amended judgment vacating Mr. Kamahele's two § 924(c) convictions based on his convictions under VICAR and for attempted Hobbs Act robbery.<sup>1</sup> The court resentsences Mr. Kamahele to time served with no period of supervised release to follow.

SO ORDERED this 16th day of August, 2023.

BY THE COURT:

  
TENA CAMPBELL  
United States District Judge

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<sup>1</sup> Counts 20 and 29 (for trial purposes renumbered to counts 9 and 18) of the Second Superseding Indictment.